

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.118 OF 2022

- 1) Abhay Tumdeo Nakade, aged 43 years, working as Assistant Teacher in Shyamaprasad Vidyalaya Wa Kanishta Mahavidyalaya, Mahagaon, Taluq Morgaon/Arjuni, District Gondia, r/o Tadgaon Po. Zarpada, Taluq Arjuni/Morgaon, District Gondia.
- 2) Ku. Vidya Deodatta Nakade, aged 38 years, occupation : Assistant Teacher, in Shyamaprasad Vidyalaya Wa Kanishta Mahavidyalaya, Mahagaon, Taluq Arjuni/Morgaon, District Gondia, r/o At Po. Visora, Taluq Desaijanj/Wadsa, District Gadchiroli.

... Petitioners

- Versus -

- 1) State of Maharashtra, through Secretary to the Govt. of Maharashtra, School Education and Sports Department, Madam Cama Road, Rajguru Hutatma Chowk, Mantralaya, Mumbai – 400 032.
- 2) The Commissioner of Education, Education Commissionerate, Maharashtra State, Pune.
- 3) The Deputy Director of Education, Nagpur Division, Nagpur, Dhantoli, Nagpur.

4) The Headmaster, Shyamaprasad  
High School and Junior College,  
Mahagaon, Taluq Arjuni/Morgaon,  
District Gondia.

5) The Secondary Education Society,  
Sakoli, Taluq Sakoli, District  
Bhandara, through its President/  
Secretary.

... Respondents

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Shri M.M. Sudame, Advocate for petitioners.

Smt. K.S. Joshi, Additional Government Pleader for respondent nos.1  
to 3.

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CORAM : SUNIL B. SHUKRE AND  
G.A. SANAP, JJ.

DATED : SEPTEMBER 30, 2022

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

Rule. Rule is made returnable forthwith. Heard finally  
by consent of the learned Counsel appearing for the parties.

2) The only ground on which approval to the appointments  
of the petitioners as Assistant Teachers has been rejected is that in  
making their appointments, the Government Resolution dated  
24/8/2018 has not been complied with. However, from the  
impugned order itself it can be seen that the petitioner no.1's  
appointment has been made on a vacancy reserved for "Other

Backward Class” category candidates, which is strictly as per advertisement issued by the Management. It is also seen that appointment of petitioner no.2 has been made only on a vacancy, which is reserved for “open” category candidates and this appointment is also strictly in accordance with the advertisement issued by the Management. Therefore, question would arise as to whether or not such appointments could be disapproved only on the ground that there is a backlog of vacancies from other reserved categories, which have not been filled up so far, which is the requirement of the Government Resolution dated 24/8/2018.

3) Answer to this question has been provided by the view taken by this Court in several cases, mostly decided in Mumbai. Review of all these cases has been taken into consideration by the learned Single Judge of this Court in the case of *Yogesh Kalyanrao Ghadage and another vs. State of Maharashtra and another* (2020 (3) Mh.L.J. 528) while taking a view that the Deputy Director of Education cannot refuse to grant approval only on the ground that backlog of reserved category candidates is not filled up, if the appointments have been made against other vacancies, which have been meant for candidates either from open category or even other

categories, if those candidates are properly selected and appointed. In the instant case, we have already seen that the appointments of both the petitioners have been made on the vacancies respectively for “Other Backward Class” category candidate and “open” category candidate and that too, strictly in accordance with the advertisement issued in that behalf by the Management and, therefore, the issue involved in this petition, in our view, is squarely covered by the view expressed in a catena of judgments discussed in the case of **Yogesh Kalyanrao Ghadage and another** (supra). As such, we find that the impugned order is illegal and is required to be quashed and set aside.

4) The petition is allowed in terms of its prayer clauses (1) and (2), which read as under :

*“(i) declare that the Deputy Director of Education, Nagpur cannot review its own order in the absence of any specific statutory conferment of powers of review of its own order, dated 18/12/2020 – Ann. XIV likewise there being no valid powers, the Deputy Director of Education cannot seat in appeal against the order passed by Education Officer, dated 9/4/2020 under the provisions of M.E.P.S. Act, 1977 (Ann. XIII);*

*(ii) quash and set aside the impugned order of Deputy Director of Education, Nagpur Region, Nagpur dated 12/11/2021 (27.10.2021), which is at Annexure XV.”*

We direct the respondent no.3 to accord approval to the appointments of the petitioners as Assistant Teachers as early as possible, preferably within eight weeks from the date of receipt of this judgment.

5) Rule is made absolute in the above terms. No costs.

JUDGE

JUDGE

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